

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

PATRICK E. DUFFY, CLERK

BY

DEPUTY CLERK

STUART SIMONSEN, an
individual,

Plaintiff,

vs.

TSUNAMI CAPITAL, LLC, an
Illinois limited liability company,

Defendant.

CV-08-119-BLG-RFC-CSO

ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS OF
U.S. MAGISTRATE JUDGE

On January 22, 2009, United States Magistrate Judge Carolyn S. Ostby entered her Findings and Recommendation with respect to (*Doc. 10*) Simonsen's motion to remand. *Doc. 24*.¹ Magistrate Judge Ostby recommends this Court exercise its discretion to decline jurisdiction over this declaratory judgment action and remanded the case to Montana's Thirteenth Judicial District Court, Yellowstone County

¹As noted by Magistrate Judge Ostby, the Ninth Circuit Court of Appeals has not passed on the debate concerning whether or not a motion to remand is subject to ruling by a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(A). Accordingly, the Court assumes it is not and proceeds pursuant to § 636(b)(1)(B)&(C).

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no party filed objections to the January 22, 2009 Findings and Recommendation. Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

After an extensive review of the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

Accordingly, **IT IS HEREBY ORDERED** that Plaintiff Simonsen's Motion for Remand (*Doc. 10*) is **GRANTED**.

The Clerk of Court is directed to notify the parties of the entry of this Order and remand this case to Montana's Thirteenth Judicial District, Yellowstone County.

DATED the 13th day of February, 2009



RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE